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10/729,917	12/09/2003	Jean-Francois Delage	117877	3312
25944	7590	05/26/2005	EXAMINER	
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			WALCZAK, DAVID J	
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			3751	
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Please find below and/or attached an Office communication concerning this application or proceeding.



## **DETAILED ACTION**

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: In regard to claims 25, 28 and 31, there is no antecedent basis in the specification for the limitation "moving at least one of the applicator and the surface relative to the other of the applicator and the surface while contacting the surface with the applicator ball".

### ***Claim Rejections - 35 USC § 112***

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. An antecedent basis for "the spring" should be defined. It appears that claim 5 should depend from claim 4, as opposed to claim 1, as the spring is first defined in claim 4.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-8, 10-13, 20, 23-25 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by EPO 506 564 A1 (as cited by Applicant, hereinafter '564). In regard to claims 1 and 13, '564 discloses an applicator comprised of a handle member 1' (see Figure 4), a retainer 8' secured to the handle member, an applicator ball 9' rotatably mounted in the retainer, an elastically deformable link element 12' connecting the retainer to the handle so that the retainer is movable relative to the handle wherein the handle member is configured to close a receptacle 14'. In regard to claim 2, the link enables the retainer to move along an axis of the handle during application. In regard to claims 4, 5, 23 and 24, the link element is a helical spring. In regard to claim 6, the handle includes a cap 1' and an insert 2' fixed in the cap wherein the link is secured to the insert. In regard to claim 7, the insert includes a skirt (not numbered, the groove in which the spring sets) whereby the link element 12' is secured to the insert. In regard to claim 8, the handle has a sealing lip (the exterior threads) for pressing against the neck of the receptacle. In regard to claim 10, the retainer 8' has a shape forming a portion of a sphere which matches the shape of the ball. In regard to claim 11, the link is not integral with the container. In regard to claim 12, the handle is configured to close the receptacle in a leak-tight manner. In regard to claim 20, the handle includes an axis (viewing Figure 4, an axis runs parallel to the insert 2') and the link element enables the retainer to "depart from the axis" during application. In regard to claims 25 and 31, the method as claimed is inherent in the operation of the '564 reference.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 9, 21, 22, 26-30, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over '564. In regard to claims 3, 22 and 28, although the '564 reference discloses a spring and not a foam link element, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that any suitable elastically resilient material/element which effectively biases the applicator ball can be used for the link, including foam, without effecting the overall operation of the device, especially since the Applicant has disclosed the used of both a helical spring and foam for the link without disclosing a functional difference between the two. In regard to claim 9, although the '564 reference does not disclose the material used to make the retainer, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that the retainer can be made from any suitable material, including plastic, without effecting the overall operation of the device. In regard to claims 21, 26, 27, 29, 30, 32 and 33, although the '564 reference does not disclose the type of product being dispensed, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that the '564 device can be used to dispense any suitable product, including a cosmetic, without effecting the overall operation of the device.

***Allowable Subject Matter***

Claims 14-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Mackles and Fillmore references are cited for disclosing other ball-type applicators.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 703-308-0608. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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5/25/05